

**Testimony of the Office of the Public Defender
State of Hawaii
to the House Committee on Judiciary**

February 16, 2012

H.B. 1926, HD 1: Relating to Assaults Against Medical Services Providers.

Representative Keith-Agaran and Members of the Committee:

This bill proposes to amend H.R.S. Section 707-711 (1) yet again by changing subsection (f) to expand the special treatment that is now afforded to "emergency medical services providers" to all "medical services providers" and to add "physical therapists" to the already long list of "physicians, physician's assistants, nurses, nurse practitioner's, certified registered nurse anesthetists, respiratory therapists, laboratory technicians, radiology technicians, and social workers". Additionally, this bill proposes that this list of occupations would receive this special treatment not just for services provided in the emergency room of a hospital, but would now include "medical clinic, federally-qualified health center, long-term care facility, or specialized nursing facility", or other licensed professional . Finally, the bill seeks to extend this special treatment to all "other licensed medical professionals involved in the direct care of patients".

These changes would elevate what is now misdemeanor conduct, i.e. "intentionally or knowingly causing bodily injury to another person" to a class "C" felony if the offense is committed against the new specified categories of persons in the new specified list of locations.

In other words, conduct currently classified as Assault in the Third Degree, punishable by up to one year in prison, would become Assault in the Second Degree, punishable by up to five years in prison, if committed against the designated persons in the designated locations.

This bill is the latest in a line of proposals seeking to single out particular occupations for special treatment as a class of victims. The problem with such legislation is that it does not afford greater protection from harm but it does create an ongoing desire by other occupations to be afforded the same special treatment.

Currently, our Second Degree assault statute gives special consideration to correctional workers, educational workers, emergency medical services personnel, firefighters and water safety officers. In recent years, we have seen legislation proposed seeking to add "health care professionals" and "child welfare social workers", to name a few, because those groups have asked for the same consideration. Next

might come security guards, late night cashiers, or any other of a legion of occupations that would ask why their group was not entitled to the same special treatment.

Other than the exceptions noted above, the structure of our penal code bases the level of an assault charge on three general criteria:

- the level of injury, if any, if caused by the defendant's conduct,
- the state of mind with which the conduct was done, and
- the actual conduct itself, including whether or not a weapon was used.

We believe that the current structure should not be further changed to include these additional proposed categories. Misdemeanor level conduct should continue to be charged as a misdemeanor.

Legislation such as H.B. 1926, HD 1 is often referred to as affording special protection for a specified group. Realistically, that is not the case. An individual who is about to commit an assault doesn't stop to say I'll engage in this conduct as a misdemeanor offense but not if it's a felony. Likewise, the situations in which these personnel find themselves where this type of behavior might occur does not lend itself to a higher degree of penalty having a deterrent effect. People acting out in these locations are often under the influence of extreme pain, drugs, alcohol or a combination of some or all of these influences.

What legislation such as this provides in reality is not special protection, but special treatment. As such, it is not appropriate, especially considering that it will simply open the door to other groups seeking the same special treatment.

For the reasons set out above, the Office of the Public Defender does not support passage of H.B. 1926. Thank you for the opportunity to comment on this bill.

Testimony of
John M. Kirimitsu
Legal and Government Relations Consultant

Before:
House Committee on Judiciary
The Honorable Gilbert S.C. Keith-Agaran, Chair
The Honorable Karl Rhoads, Vice Chair

February 16, 2012
2:40 pm
Conference Room 325

Re: HB 1926 HD1 Relating to Assaults Against Medical Services Providers

Chair, Vice Chair, and committee members thank you for this opportunity to provide testimony on this bill relating to violence against medical personnel.

Kaiser Permanente Hawaii supports this bill, but would like to offer amendments.

Kaiser Permanente supports this bill to protect medical providers from unnecessary violence in the workplace, but asks that the scope of protection be expanded to also include unlicensed professionals, i.e. health care assistants, medical interns/externs, who are often on the front lines providing medical care and thus, vulnerable to the same workplace violence. These assistive personnel and support workers are considered a vital part of health care teams, and should be afforded the same protections as other medical professionals. Therefore, we ask that the definition of “medical services provider” in paragraph (1)(f), be amended on Page 2, line 20, to include “any other licensed or unlicensed medical professional.”

Additionally, it is widely recognized that as the baby boomer generation ages, the demand for home care services is expected to increase by 50 percent between 2002 and 2012 according to the Bureau of Labor Statistics. Therefore, given this ever growing demand for home health residential services, we ask that the definition of “medical services provider” in paragraph (1)(f) be amended on Page 3, line 1, to include “home health residential” as a type of facility afforded protection under this bill.

Finally, to be consistent throughout, we ask that the reference to “emergency room” on Page 2, line 21, be deleted.

Thank you for your consideration.

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HOUSE COMMITTEE ON JUDICIARY
Rep. Gilbert S.C. Keith-Agaran, Chair

Conference Room 325
February 16, 2012 at 2:40 p.m.

Supporting HB 1926 HD 1 with an amendment

The Healthcare Association of Hawaii advocates for its member organizations that span the entire spectrum of health care, including all acute care hospitals, as well as long term care facilities, home care agencies, and hospices. In addition to providing quality care to all of Hawaii's residents, our members contribute significantly to Hawaii's economy by employing over 40,000 people. Thank you for this opportunity to testify in support of HB 1926 HD 1, which extends the enhanced penalties for violence against certain emergency medical services staff to others.

Health care workers have faced a significant risk of job-related violence for many years. Injury rates reveal the increased risk. The Bureau of Labor Statistics measures the number of assaults resulting in injury per 10,000 full-time workers in different categories. The overall private sector incidence rate is 2. The rate for health service workers overall is 9.3. The rate for nursing and personal care workers is 25.

Hawaii statute recognizes that certain groups deserve increased legal protection, such as educational workers, correctional workers, firefighters, and workers at State mental health facilities. Conduct classified as Assault in the Third Degree for others is classified as Assault in the Second Degree for these groups. Emergency medical service personnel in hospitals are also currently given increased protection. This bill is intended to extend the added protection to medical services staff in hospitals, medical clinics, and federally qualified health centers.

However, the text of the bill is unclear. The committee report submitted by the Committee on Health on the HD 1 version of HB 1926 describes the amendment as including medical services staff of long-term care facilities and specialized nursing facilities. However, the text of the bill may be interpreted to apply only to those who work in emergency rooms of various types of facilities (page 2, line 20 to page 3, line 2). The bill should be amended to clarify that the increased protection applies to all medical services staff of hospitals, medical clinics, federally-qualified health centers, long-term care facilities, and specialized nursing facilities.

In addition, the Healthcare Association of Hawaii supports a further amendment so that the increased protection applies to medical services staff of home health agencies, home care agencies, hospices, physician offices, and dentist offices.

With these amendments, the Healthcare Association of Hawaii supports HB 1926 HD 1.



THE QUEEN'S HEALTH SYSTEMS

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Representative Gilbert S.C. Keith-Agaran, Chair
Representative Karl Rhoads, Vice-Chair
HOUSE COMMITTEE ON JUDICIARY

February 16, 2012 – 2:40 p.m.
State Capitol, Conference Room 325

Regarding H.B. 1926, HD1 Relating to Assaults on Medical Services Providers

Chair Keith-Agaran, Vice Chair Rhoads, and Members of the Committee,

My name is Cindy Kamikawa, Vice President, Nursing, Trauma, ED and Chief Nursing Officer of The Queen's Medical Center (QMC), testifying in **strong support** for H.B.1926, HD1, which provides critical protections for medical providers from unnecessary violence in the workplace.

Health care workers have faced increase risks of job-related violence in recent years. This measure could be further strengthened with the inclusion of unlicensed professionals, such as health care assistants and employees in any health care setting, such as a physician's office or a long term care facility.

Thank you for the opportunity to provide testimony in support of this measure.